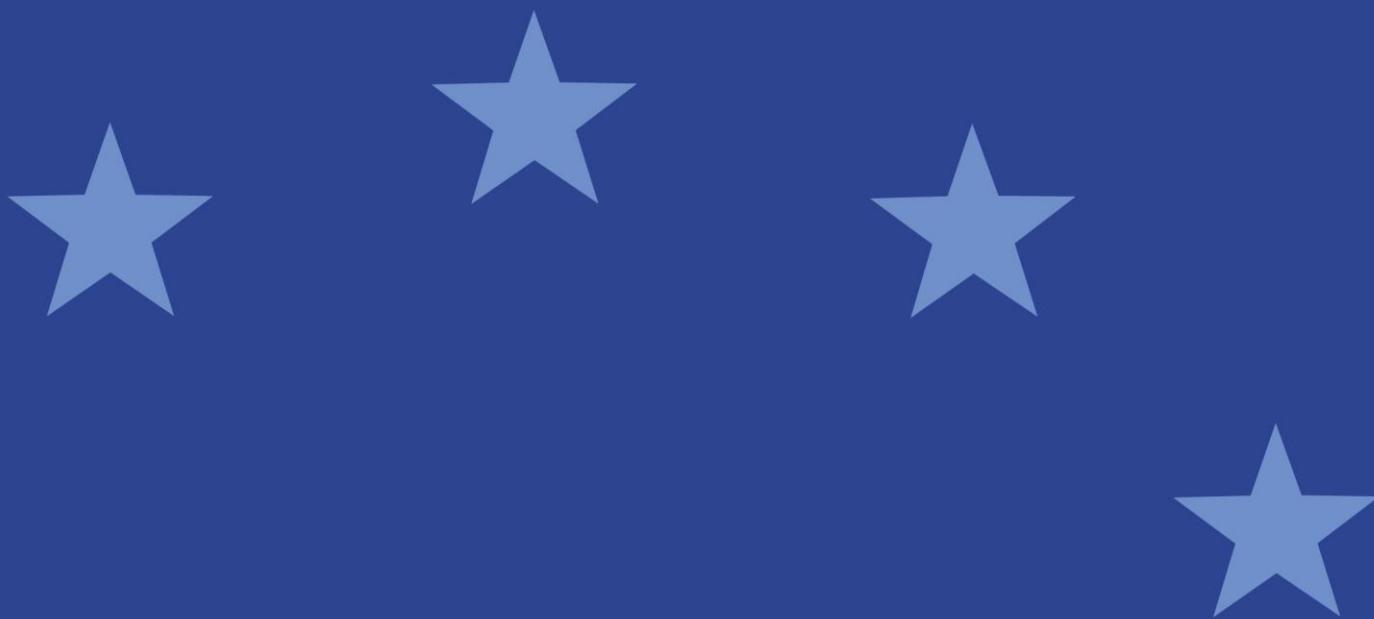


Final report

Draft Implementing Technical Standards on forms and procedures for cooperation under Article 24 and 25 of Regulation (EU) No 596/2014 on market abuse





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Acronyms

ACER	Agency for the Cooperation of Energy Regulators
EEA	European Economic Area
EU	European Union
ESMA	European Securities and Markets Authority
ITS	Implementing Technical Standards
MAR	Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC ¹
NCA	National Competent Authority, a competent authority referred to in Article 3(1)(12) of MAR
NRA	National Regulatory Authority as defined under Article 2(10) of REMIT
REMIT	Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency ²

¹ OJ L 173, 12.6.2014, p. 1

² OJ L 326, 8.12.2011, p. 1

I. Executive summary

1. This report contains ESMA's proposed draft Implementing Technical Standards on how NCAs and ESMA should cooperate with each other and with the rest of EU authorities, entities and public bodies mentioned in Article 25 of MAR.
2. In particular, this report sets out procedures and forms for NCAs and ESMA to exchange information and assist each other as well as the rest of EU authorities, entities and public bodies mentioned in Article 25 of MAR.

II. Background

3. Articles 24 and 25 of MAR of the Market Abuse Regulation (MAR) mandate ESMA to develop draft ITS concerning the procedures and forms for exchange of information and assistance:
 - a. among NCAs;
 - b. between NCAs and the Commission in relation to the exchange of information relating to the commodities on agricultural products referred to in Article 25(1) second subparagraph of Regulation (EU) No 596/2014;
 - c. between NCAs and the relevant national regulatory authorities responsible for the related spot markets;
 - d. in relation to emission allowances, between NCAs and the entities referred to in points (a) and (b) of Article 25(8), second subparagraph of Regulation (EU) No 596/2014;
 - e. between NCAs and ACER;
 - f. between NCAs and NRAs defined in REMIT;
 - g. between ESMA and ACER;
 - h. between NCAs and ESMA.
4. Considering the recipients of these draft ITS and in order to facilitate their application, ESMA has split the subjects of these mandates in two subgroups and therefore has developed two different sets of draft ITS that would respectively cover procedures and forms for exchange of information and assistance:
 - among NCAs; and

- between NCAs and ESMA with the rest of the authorities, entities and public bodies mentioned under Art.25 MAR.
5. In splitting the mandates, ESMA has also taken into consideration that the draft ITS on cooperation between NCAs takes their root in existing cooperation practices and the ESMA MoU. For the rest of authorities, agencies, entities and public bodies, except for the case of ACER, with whom ESMA signed a MoU in 2013, new forms and procedures have had to be considered following the views and advise of all the parties involved.
 6. The division also obeys to the different powers, functions and abilities of the authorities and entities obliged to cooperate, having the cooperation between NCAs a broader scope and a more regular basis. The level and type of assistance between the different authorities, agencies, entities and public bodies is not the same, as well as the authorities and entities on which they are obliged to cooperate with each other. In this sense, NCAs are the only authorities that, according to Article 25 of MAR, have to cooperate with the Commission in relation to the exchange of information relating to the commodities on agricultural products referred to in Article 25(1) second subparagraph of Regulation (EU) No 596/2014; whereas regarding cooperation with ACER, the authorities obliged are ESMA and NCAs, though at different levels as set out in Article 25 (3) and (5) of MAR.
 7. ESMA was required to submit the draft ITS to the European Commission by 3 July 2016, according to the mandates in Articles 24 and 25 of MAR, respectively. In the spring of 2015, it was agreed to postpone the submission to the Commission of both draft ITS in light of the longer deadline, and also because the existing ESMA MoU (for NCAs) and IOSCO MMoU cover this area and therefore this work was not considered a priority for competent authorities. The Commission and the EU Parliament were informed accordingly.
 8. The first draft ITS for exchange of information and assistance among NCAs has been submitted to the Commission in the spring of 2017 (ESMA70-145-100)³.
 9. This report is addressing the draft ITS on cooperation among NCAs, ESMA, Commission, ACER, NRAs and the rest of EU authorities, entities and public bodies referred to in Article 25 of MAR.
 10. ESMA has not conducted a public consultation, but a targeted one with the entities possibly affected by the draft ITS, being those, NCAs, Commission, ACER, NRAs and in relation to emission allowances, the auction monitor, competent authorities, registry administrators, including the Central Administrator, and other public bodies charged with the supervision of compliance under Directive 2003/87/EC. The consultation with NRAs was performed through both, ACER and NCAs, and the consultation with the auction monitor, competent authorities, registry administrators, including the Central Administrator, and other public

³ https://www.esma.europa.eu/sites/default/files/library/esma70-145-100_final_report_draft_its_cooperation_between_ncas_art_25_of_mar.pdf

bodies charged with the supervision of compliance under Directive 2003/87/EC was done with the assistance of NCAs, being these latter ones better placed to do so. The reason of not having a public consultation is that such a consultation would have been disproportionate in relation to the scope and impact of the draft ITS, taking into account that the addressees of the ITS would only be the above mentioned entities and not market participants.

11. ESMA has requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Articles 15(1) and 37(1) of Regulation (EU) No 1095/2010 of the European Parliament and of the Council.
12. Annex I recalls the legislative mandate to develop the draft ITS and Annex II sets out the full text of the draft ITS.

III. Cooperation between NCAs, ESMA, and specific authorities and entities mentioned in Article 25 of MAR

13. The communication between the authorities listed in points (b) to (h) of paragraph 3 above should occur using designated contact points. These contact points may not be always physical persons, but could be mailboxes or any other point that ensure the reception, avoiding thus unnecessary delays or failed deliveries, of information. ESMA shall make available the information on designated contact points to ACER, NRAs and NCAs and shall communicate the details of the contact points designated by the NCAs to the other authorities and entities at least once a year.
14. The draft ITS describe the specific procedures to be followed by ESMA and NCAs for making, acknowledging, processing and replying to requests for assistance as well as when unsolicited assistance is provided.
15. The draft ITS also describe ESMA's coordination and facilitation role referred to in Article 25 of MAR, particularly in cross-border investigations and inspections.
16. The draft ITS aim at facilitating the communication between the EU authorities, agencies, entities and public bodies where the information that has been provided to them further to a request for assistance is intended to be used for purposes not stated in the request, but falling under MAR or REMIT, this latter in the case of ACER.
17. Most of the comments received in the consultation came from ACER and NRAs and focused on the contact points and the means of transmission for communication. These comments and requests have been accommodated and clarified in this report as well as in the draft ITS to the extent possible.
18. The relevant forms to be used by NCAs and ESMA for the above cooperation and exchange of information activities are set out in the annexes of the draft ITS.

Annex I: Legislative mandate

1. Article 24(3) of MAR provides that:

3. In order to ensure uniform conditions of application of this Article, ESMA shall develop draft implementing technical standards to determine the procedures and forms for exchange of information as referred to in paragraph 2.

ESMA shall submit those draft implementing technical standards to the Commission by 3 July 2016.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

2. Article 25(9) of MAR provides that:

“In order to ensure uniform conditions of application of this Article, ESMA shall develop draft implementing technical standards to determine the procedures and forms for exchange of information and assistance as referred to in this Article.

ESMA shall submit those draft implementing technical standards to the Commission by 3 July 2016.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.”



Annex II: Draft implementing technical standards on procedures and forms for exchange of information and assistance between competent authorities, ESMA and specific authorities and entities according to MAR



EUROPEAN COMMISSION

Brussels, **XXX**
[...] (20XX) **XXX** draft

COMMISSION IMPLEMENTING REGULATION (EU) No .../..

of **[dd mm yyyy]**

[...]



DRAFT COMMISSION IMPLEMENTING REGULATION (EU) .../...

Of [dd mm yyyy]

laying down implementing technical standards to determine procedures and forms for exchange of information and assistance between competent authorities, the European Securities and Markets Authority and specific authorities and entities according to Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC¹, and in particular Articles 24(3) and 25(9) thereof,

Whereas:

- (1) In order to ensure that authorities designated as competent authorities under Regulation (EU) No 596/2014, the European Securities and Markets Authority (ESMA), the Commission (in relation to the exchange of information relating to commodities which are agricultural products listed in Annex I of the TFEU), the Agency for the Cooperation of Energy Regulators (ACER), the national regulatory authorities of the Member States, the relevant national regulatory authorities responsible for the related spot markets, and in relation to emission allowances, the auction monitor and the competent authorities, registry administrators, including the Central Administrator and other public bodies charged with the supervision of compliance under Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003², are able to cooperate and exchange information in an efficient and timely manner for the purposes of Regulation (EU) No 596/2014, it is appropriate to set out common procedures and forms to be used by the aforementioned authorities and entities for exchange of information and assistance.

¹ OJ L 173, 12.6.2014, p1.

² OJ L 275, 25.10.2003, p32.

- (2) The exchange of written information should assist the authorities in fulfilling their duties. Oral communication may take place, where appropriate, including before a written request is sent, to provide information about an upcoming request for assistance and to discuss any issues that may impede the assistance being provided. In urgent cases, a request for assistance should also be permitted to be communicated orally, where the urgency is not due to late action by the requesting party.
- (3) Unsolicited assistance should be provided in accordance with Regulation (EU) No 596/2014, including on a voluntary basis when the competent authority of a Member State considers that information in its possession may be of use for another authority, entity or ESMA.
- (4) A request for assistance pursuant to Regulation (EU) No 596/2014 should provide sufficient information about the subject matter of the request, including the reason for the request and its context, to enable the requested authority to process the request efficiently and expeditiously. The authority seeking assistance should not be required to specify the facts giving rise to its suspicion in order to receive assistance. Indicating the facts giving rise to suspicion should not be considered as a precondition for a requesting authority to receive assistance where that requested information is necessary for the authority to fulfil its duties.
- (5) To exchange information with ACER and national regulatory authorities through secure means of transmission, competent authorities and ESMA could use the specific secure communication interface jointly specified by ESMA and ACER.
- (6) The procedures and forms for the exchange of information and assistance should ensure the confidentiality of the information exchanged or transmitted and compliance with the rules on the protection of individual with regard to the processing of personal data and on the free movement of such data.
- (7) This Regulation is based on the draft implementing technical standards submitted by ESMA to the Commission.
- (8) ESMA did not conduct open public consultations on the draft implementing technical standards on which this Regulation is based, nor did it analyse the potential related costs and benefits of introducing the procedures and forms to be used by the authorities, ESMA, the Commission, ACER, and in relation to emission allowances, the auction monitor, competent authorities, registry administrators, including the Central Administrator, and other public bodies charged with the supervision of compliance under Directive 2003/87/EC, as this would have been disproportionate in relation to the scope and impact of those standards, taking into account that their addressees would only be the aforementioned authorities and entities and not market participants.

- (9) ESMA has requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council³.
- (10) To ensure the smooth functioning of the financial markets and considering that Regulation (EU) No 596/2014 is already in application, it is necessary for this Regulation to enter into force and apply immediately;

HAS ADOPTED THIS REGULATION:

Chapter I

GENERAL PROVISIONS

Article 1

Subject matter

1. This Regulation lays down the procedures and forms for the exchange of information and assistance referred to in Articles 24(2) and 25 of Regulation (EU) No 596/2014 that may occur:
 - i. between competent authorities and the Commission for the exchange of information relating to the commodities referred to in the second subparagraph of Article 25(1) of Regulation (EU) No 596/2014;
 - ii. between competent authorities and relevant national regulatory authorities responsible for the related spot markets described in the first subparagraph of Article 25(8) of Regulation (EU) No 596/2014;
 - iii. in relation to emission allowances, between competent authorities and the entities referred to in points (a) and (b) of the second subparagraph of Article 25(8) of Regulation (EU) No 596/2014;
 - iv. between competent authorities and the Agency for the Cooperation of Energy Regulators (ACER);
 - v. between competent authorities and the national regulatory authorities of the

³ OJ L 331, 15/12/2010, p. 84.

Member States referred to in Article 2(10) of Regulation (EU) No 1227/2011;

- vi. between the European Securities and Markets Authority (ESMA) and ACER;
 - vii. between competent authorities and ESMA.
2. For the purposes of cooperation between competent authorities under Article 25 of Regulation (EU) No 596/2014, competent authorities shall cooperate and provide information to each other in accordance with [*Commission Delegated Regulation (EU) .../... of XXX [...] supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to implementing technical standards for cooperation*].
 3. For the purposes of cooperation with third-country regulatory authorities responsible for commodities spot markets referred to under the first subparagraph of Article 25(8) of Regulation (EU) No 596/2014, competent authorities shall cooperate and provide information in accordance with [*Commission Delegated Regulation (EU) .../... of XXX [...] supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for cooperation arrangements with third countries to be used by competent authorities of Member States*].

Article 2

Definition

For the purposes of this Regulation, “electronic means” are means of electronic equipment for the processing (including digital compression), storage and transmission of data, employing wires, radio, optical technologies, or any other electromagnetic means.

Article 3

Contact points

1. The authorities and entities referred to in Article 1(1)(i),(iv),(v),(vi) and (vii) shall designate contact points for the purposes of this Regulation. Those authorities and entities, except ESMA, shall communicate the details of the contact points to ESMA within 30 days of this Regulation entering into force. They shall provide updated

information to ESMA as necessary.

2. ESMA shall ask, within 30 days of this Regulation entering into force, the authorities and entities referred to in Article 1(1)(ii) and (iii) to communicate to ESMA details of any contact points designated by them for the purposes of this Regulation and to inform ESMA about any subsequent changes to this information. ESMA shall ask for update of this information at least once a year.
3. ESMA shall maintain a list of the contact points designated by the authorities and entities and update that list as necessary for the use of the competent authorities, the national regulatory authorities of the Member States referred to in Article 3(1)(23) of Regulation (EU) No 596/2014 and ACER. ESMA shall communicate the details of the contact points designated by the competent authorities to the other authorities and entities referred to in Article 1 at least once a year.

CHAPTER II

COOPERATION PROCEDURES BETWEEN AUTHORITIES AND ENTITIES REFERRED TO IN ARTICLE 1(1)(i), (ii) and (iii)

Article 4

Request for assistance

1. A competent authority shall make a request for assistance to an authority or entity referred to in Article 1(1)(i), (ii) and (iii) in writing by post, fax or electronic means. It shall address the request to any contact point designated by the requested authority or entity.
2. When requesting assistance, a competent authority shall use the form set out in Annex I and shall:
 - (a) specify the details of the relevant information that the requesting competent authority is seeking and
 - (b) identify, where appropriate, issues relating to the confidentiality of the information that may be obtained.
3. The requesting competent authority may attach to the request any document or supporting material deemed necessary to support the request.

4. In urgent cases, the competent authority may make a request for assistance verbally. Unless the requested authority or entity agrees otherwise, that oral request shall subsequently be confirmed in writing without undue delay by using the means referred to in paragraph 1.
5. Paragraphs 1 to 4 shall apply to the Commission for the exchange of information with competent authorities relating to the commodities referred to in the second subparagraph of Article 25(1) of Regulation (EU) No 596/2014.
6. When making a request to an authority or entity referred to in Article 1(1)(ii) and (iii), the requesting competent authority shall attach to the request the forms in Annexes II and III in order to facilitate the acknowledgement of receipt as well as the reply by the requested authority or entity.
7. The authorities or entities referred to in Article 1(1)(ii) and (iii), other than competent authorities, may use the form set out in Annex I to send a request for assistance.

Article 5

Acknowledgement of receipt

1. Within 10 working days of receipt of a written request for assistance, a requested competent authority shall send an acknowledgement of receipt by post, fax or electronic means to any designated contact point, unless otherwise specified in the request. This acknowledgement of receipt shall be made by using the form set out in Annex II and shall include, where possible, an estimated date of response.
2. Paragraph 1 shall apply to the Commission for the exchange of information with competent authorities relating to the commodities referred to in the second subparagraph of Article 25(1) of Regulation (EU) No 596/2014.
3. The authorities or entities referred to in Article 1(1)(ii) and (iii), other than competent authorities, may use the form set out in Annex II to acknowledge receipt of a request for assistance from a competent authority.

Article 6

Reply to a request for assistance

1. The requested competent authority shall reply to a request for assistance in writing by post, fax or electronic means. The reply shall be addressed to any designated contact point unless otherwise specified by the requesting authority or entity.
2. The requested competent authority shall reply to the request for assistance using the form set out in Annex III and shall:
 - (a) request further clarifications in any form and as soon as possible where it has any doubt in relation to the precise information requested;
 - (b) take all reasonable steps within the scope of its powers to provide the assistance requested;
 - (c) execute requests for assistance without delay and in a manner which ensures that any necessary regulatory action proceeds expediently, taking into account the complexity of the request and the necessity to involve third parties or another authority or entity.
3. Where a requested competent authority refuses to act, in full or in part, upon a request for assistance, it shall inform the requesting authority or entity as soon as possible of its decision, verbally or in writing. The requested competent authority shall also provide a written reply made in accordance with paragraph 1 that indicates which of the exceptions under Article 25(2) of Regulation (EU) No 596/2014 it has relied upon for its refusal.
4. Paragraphs 1 and 2 shall apply to the Commission for the exchange of information with competent authorities relating to the commodities referred to in the second subparagraph of Article 25(1) of Regulation (EU) No 596/2014.
5. The authorities or entities referred to in Article 1(1)(ii) and (iii), other than competent authorities, may use the form set out in Annex III to reply to a request for assistance from a competent authority.

Article 7

Procedures for sending and processing a request for assistance

1. A competent authority shall communicate with another authority or entity referred to in Article 1(1)(i), (ii) and (iii) in relation to a request for assistance and its reply by the most expedient means, taking due account of confidentiality considerations, correspondence times, the volume of material to be communicated and the ease of access to the information. In particular, the requesting competent authority shall respond promptly to any clarifications requested by the requested authority or entity.
2. When the requested competent authority becomes aware of circumstances that may lead to a delay in its estimated date of response of more than 10 working days, it shall notify the requesting authority or entity without undue delay.
3. Where appropriate, the requested competent authority shall provide regular feedback regarding progress of the pending request, including revised estimates of the targeted date of reply to the requesting authority or entity.
4. Where the request has been qualified as urgent, the competent authority shall consult with the other authority or entity referred to in Article 1(1)(i), (ii) and (iii) on the frequency of updates required from the requested authority or entity.
5. The competent authority shall cooperate with the other authority or entity referred to in Article 1(1)(i), (ii) and (iii) in order to resolve any difficulties that may arise in executing a request.
6. Paragraphs 1 to 5 shall apply to the Commission for the exchange of information with competent authorities referred to in the second subparagraph of Article 25(1) of Regulation (EU) No 596/2014.

Article 8

Unsolicited exchange of information

1. For the purposes of transmitting unsolicited information under Article 25(8) of Regulation (EU) No 596/2014, a competent authority shall transmit such information in writing by post, fax or electronic means, to any contact point designated by the relevant authority or entity referred to in Article 1(1)(ii) and (iii).
2. Where the competent authority sending the information believes the information should be transmitted urgently, it may inform the other authority or entity verbally, provided

that a subsequent transmission is made in writing.

3. A competent authority that sends information on an unsolicited basis shall do so using the form set out in Annex IV, identifying in particular issues relating to the confidentiality of information.

CHAPTER III

COOPERATION PROCEDURES BETWEEN AUTHORITIES AND ENTITIES REFERRED TO IN ARTICLE 1(1)(iv), (v) and (vi)

Article 9

Procedures for communication and cooperation

1. For the purposes of giving notice to ACER of acts contrary to the provisions of MAR in relation to wholesale energy products as referred to in Article 25(5) of Regulation (EU) No 596/2014 and Article 16(3)(c) of Regulation (EU) No 1227/2011, informing it of significant interim developments and consulting with it, a competent authority shall use means of transmission ensuring that the completeness, integrity and confidentiality of the information are maintained during the transmission. These means shall be jointly specified by ESMA and ACER.

When giving notice to ACER in accordance with the first subparagraph, the competent authority shall use the form set out in Annex IV, identifying in particular issues relating to the confidentiality of information.

2. For the purposes of the cooperation referred to in Article 25(3) of Regulation (EU) No 596/2014 and Article 1(3) of Regulation (EU) No 1227/2011, the authorities referred to in Article 1(1)(iv), (v) and (vi) shall use the contact points designated pursuant to Article 3 and means of transmission ensuring that the completeness, integrity and confidentiality of the information are maintained during the transmission. These means shall be jointly specified by ESMA and ACER.
3. For the purposes of coordinating actions on cross-border cases under Article 25(3) of Regulation (EU) No 596/2014, the competent authority shall participate when requested by ACER in a cross-border investigatory group established under Article 16(4)(c) of Regulation (EU) No 1227/2011.
4. For the purpose of ensuring a consistent approach to the enforcement of the relevant rules under Regulation (EU) No 596/2014 and Regulation (EU) No 1227/2011

irrespective of the existence of a specific case, ESMA and ACER shall consult regularly in written or oral form. Written consultation shall be organised through the contact points designated by ESMA and ACER pursuant to Article 3 and the information shall be transmitted in writing by post, fax or electronic means.

CHAPTER IV

COOPERATION PROCEDURES BETWEEN COMPETENT AUTHORITIES AND ESMA

Article 10

Notifying and reporting to ESMA

1. For the purposes of making a notification to ESMA in accordance with Article 25(5) of Regulation (EU) No 596/2014, a competent authority shall follow the procedures set out in Article 8.
2. Where a competent authority decides to inform ESMA of a request for assistance made to the competent authority of another Member State in accordance with the second subparagraph of Article 25(6) of Regulation (EU) No 596/2014, the competent authority shall transmit to ESMA a copy of the request for assistance.
3. For the purposes of referring to ESMA, under the first subparagraph of Article 25(7) of Regulation (EU) No 596/2014, a rejection of a request for information or assistance or an absence of action within a reasonable timeframe in respect of such a request, a competent authority shall make the referral to ESMA in writing and provide:
 - (a) a copy of the relevant request for information or assistance and any reply received to it;
 - (b) its reasons for referring the rejection or absence of action to ESMA.
4. A competent authority shall transmit the information referred to in paragraphs 2 and 3 to the contact point designated by ESMA pursuant to Article 3 by post, fax or electronic means which may include a system established by ESMA. Those electronic means shall ensure that the completeness, integrity and confidentiality of the information are maintained during its transmission.

Article 11

Request for assistance from ESMA

1. For the purposes of Article 24(2) Regulation (EU) No 596/2014, ESMA shall make a request for assistance to a competent authority in accordance with Article 4(1) to (4). The competent authority receiving the request for assistance shall acknowledge receipt in accordance with Article 5(1) to (3).
2. The competent authority receiving the request for assistance from ESMA shall reply to this request in accordance with Article 6(1) to (3).
3. The competent authority receiving the request for assistance and ESMA shall apply the procedures set out in Article 7(1) to (5).

Article 12

ESMA coordination and facilitation roles

1. A competent authority requesting ESMA to coordinate an investigation or an inspection with cross-border effect in accordance with the second subparagraph of Article 25(6) of Regulation (EU) No 596/2014 shall make a request in writing to the contact point designated by ESMA pursuant to Article 3 by post, fax or electronic means which may include a system established by ESMA. Those electronic means shall ensure that the completeness, integrity and confidentiality of the information are maintained during its transmission.
2. Where ESMA is requested to coordinate an investigation or inspection with cross-border effect, ESMA may establish a temporary group on an ad hoc basis to include the competent authorities of the Member States affected by the relevant investigation or inspection.
3. For the purposes of the third paragraph of Article 25(8) of Regulation (EU) No 596/2014, ESMA may assist competent authorities in the development, negotiation and signing of cooperation arrangements between competent authorities with the relevant supervisory authorities of third countries, and with regulatory authorities in other Member States.

CHAPTER V

USE OF THE INFORMATION

Article 13

Restrictions and permissible uses of information

1. When using the forms in the Annexes to make or reply to a request for assistance or transmitting unsolicited information, the authorities and entities referred to in Article 1(1) shall include an appropriate confidentiality warning.
2. Where, in order to execute the request for assistance, the requested authority or entity is required to disclose the fact that another authority or entity has made a request, the requested authority or entity shall disclose it after having discussed the nature and extent of the disclosure required with the requesting authority or entity and after having obtained its consent to such disclosure. Where the requesting authority or entity does not provide its consent to the disclosure, the requesting authority or entity may withdraw or suspend its request until it is able to provide such consent to disclosure.
3. Information received pursuant to Article 25(5) of Regulation (EU) No 596/2014 shall be used solely by the relevant authorities for the performance of their duties and the exercise of their functions or for the purposes of securing compliance with or enforcement of the provisions of Regulation (EU) No 596/2014 or Regulation (EU) 1227/2011, including but not limited to initiating, conducting or assisting in criminal, administrative, civil or disciplinary proceedings resulting from a breach of the provisions of the same Regulation and in the case of ACER also for the purpose of carrying out its tasks under Regulation (EU) No 1227/2011.
4. ESMA shall use the information received in accordance with Articles 10 and 11 solely for the purposes of its duties under the Regulation (EU) No 596/2014 or under Regulation (EU) No 1095/2010.

CHAPTER VI

FINAL PROVISIONS

Article 14

Entry into force and application

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.



This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission
The President*

On behalf of the President

[Position]



ANNEX I

Form for a request for assistance

Request for assistance

Reference number:

Date:

Annexes: [*specify the number of documents/supporting documents attached*]

General information

FROM:

Member State:

Requesting Authority:

Legal address:

[Insert the contact details of the contact point designated pursuant to Article 3 of the Commission Implementing Regulation (EU) No .../...¹, for dealing with this request and identified below]

Name:

Telephone:

Email:

TO:

Member State:

¹ Insert reference to this Regulation



Requested Authority:

Legal address:

[Insert the contact details of the contact point designated pursuant to Article 3 of the Commission Implementing Regulation (EU) No .../...²]

Name:

Telephone:

Email:

Dear *[insert appropriate name]*

In accordance with Article [4 or 11] of the Commission Implementing Regulation (EU) No .../...³ laying down implementing technical standards [to determine procedures and forms for exchange of information and assistance with the authorities and entities listed under Article 25 and between competent authorities and ESMA] your assistance is sought in relation to the matter(s) set out in further detail below.

I would be grateful for the above assistance by *[Insert indicative date for the reply and in case of an urgent request insert deadline for the information to be provided by]* or, if that is not possible, for an indication as to when you anticipate being in a position to provide the assistance which is sought.

Reasons for the request for assistance

.....
.....
.....
.....

² Insert reference to this Regulation

³ Insert reference to this Regulation

[Insert provision(s) of the sectoral legislation under which the requesting authority is competent to deal with the matter]

The request concerns assistance in

.....
.....
..
.....
.....
.....
.....
.....

[Insert description of the subject matter of the request, the purpose for which the assistance is sought, facts relating to the investigation as contextual information for the request and explanation for its helpfulness for fulfilling its duties]

Further

to.....
.....
.....
.....
.....

[If applicable, insert details of the previous request in order to enable it to be identified]

1. Provision of information

(a) Please provide a detailed description of the specific information sought with reasons why that information will be of assistance and, if known, a list of the persons considered possessing the information sought or the places where such information may be obtained.

.....
.....
.....

.....
.....

(b) If the request concerns information relating to a transaction or order in a specific financial instrument, please provide the following information.

Product ID:

.....

[Insert precise description of the financial instrument, including any applicable identification standard code such as the ISIN code the AII or the transaction identification code for emission allowances]

Person ID:.....

[Insert the identity of any person connected with the transaction or order, including a person dealing in the financial instrument or on whose behalf the dealing is considered to have taken place, and any applicable identification code, such as LEI code or client Id code under MiFIR]

Dates:

[Insert the dates between which transactions or orders in those financial instruments took place including in the case of a significant period of time, reasons why the entirety of the time period is beneficial]

(c) If the request concerns information relating to the business or activities of a person, please provide information as precise as possible to enable that person to be identified.

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(d) If there are special considerations on the sensitivity of the information sought, please provide an indication of the sensitivity of the information contained in the request and any special precautions that have to be taken in collecting the information due to investigatory considerations.

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(e) Please provide any additional information.

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[Whether the requesting authority has been or will be in contact with any other authority or law enforcement agency in the Member State of the requested authority in relation to the subject matter of the request or any other authority which the requesting authority is aware that has an active interest in the subject matter of the request]

(f) In case of an urgent request and the setting of any deadlines, please provide full explanation of the urgency of the request and an explanation of any deadlines that the requesting authority has asked for the information to be provided by.

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2. Taking of a statement (If relevant and permitted by the law of the authority or entity receiving the request for assistance)

Please indicate:

(a) Nature of the statement sought:

.....
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.....

[Insert indication of preference, if any, as to the nature of the statement sought, e.g. affirmation or other legal instructions; on a voluntary or compelled basis if applicable]

(b) Need and purpose of the taking of a statement:

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.....

(c) Name of person(s) from whom the statement is to be obtained:

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.....

[Insert details of the persons from which the statement will be taken, including where relevant the person's position and the company, to enable the requested authority to begin organizing the taking of the statement including the summoning process where applicable]

(d) Detailed description of the information sought, including a preliminary list of questions (if available at the time of the request).

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(e) Any additional information which may be useful:

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[Whether the requesting authority's staff is requesting participation in the taking of the statement, details of the participating officials of the requesting authority, where appropriate, description of any legal and procedural requirements that must be complied with to ensure the admissibility of statements made in the interview in the jurisdiction of the requesting's authority]

[Insert any confidentiality warnings or any restrictions on the permissible uses of information (provided those restrictions are compliant with Union law)].

For competent authorities and ESMA, it should read:

“The information included in this request shall be kept confidential in accordance with Article 13 of Commission Implementing Regulation (EU) No .../...⁴ and Article 27 Regulation (EU) No 596/2014. The requirements of Article 28 of Regulation (EU) No 596/2014 shall be observed with respect to any personal data included in this request.”]

Your contact point for any queries you might have in relation to any aspects of this request is [*Insert relevant contact point name and contact point details: telephone, email*]

Yours sincerely,

[*Name and signature*]

⁴ Insert reference to this Regulation



ANNEX II

Form for the acknowledgment of receipt of a request for assistance

Acknowledgment of receipt of a request for assistance

	Reference number:
	Date:
<u>FROM:</u>	
Member State:	
Requested Authority:	
Legal address:	
<i>[Insert the contact details of the contact point designated pursuant to Article 3 of the Commission Implementing Regulation (EU) No .../...⁵ or the person designated as contact point for dealing with this request and identified below]</i>	
Name:	
Telephone:	
Email:	
<u>TO:</u>	
Member State:	
Requesting Authority:	
Legal address:	
<i>[Insert the contact details of the contact point designated pursuant to Article 3 of the Commission Implementing Regulation (EU) No .../...⁶ unless otherwise specified by the requesting authority]</i>	

⁵ Insert reference to this Regulation

⁶ Insert reference to this Regulation



Name:

Telephone:

Email:

Dear [*Insert appropriate name*]

In accordance with Article 5 of Commission Implementing Regulation (EU) No .../...⁷ laying down implementing technical standards [to determine procedures and forms for exchange of information and assistance with the authorities and entities listed under Article 25 and between competent authorities and ESMA], we hereby acknowledge receipt of your request for assistance with reference [*Insert request reference number*] on [*Insert date*].

The relevant person(s) within [*Insert name of the requested authority*] dealing with your request is [*Insert name, telephone, email*].

Estimated date of response:

Yours sincerely,

[*Name and signature*]

⁷ Insert reference to this Regulation



ANNEX III

Form for the reply to a request for assistance

Reply to a request for assistance

Reference number:

Date:

Annexes: *[specify the number of documents/supporting documents attached]*

General information

FROM:

Member State:

Requested Authority:

Legal address:

[Insert the contact details of the contact point designated pursuant to Article 3 of the Commission Implementing Regulation (EU) No .../...⁸ unless otherwise specified by the requested authority]

Name:

Telephone:

Email:

TO:

Member State:

Requesting Authority:

Legal address:

⁸ Insert reference to this Regulation

[Insert the contact details of the contact point designated pursuant to Article 3 of the Commission Implementing Regulation (EU) No .../...⁹ unless otherwise specified by the requesting authority]

Name:

Telephone:

Email:

Dear *[Insert appropriate name]*

In accordance with Article [6] of Commission Implementing Regulation (EU) No .../...¹⁰ laying down implementing technical standards [to determine procedures and forms for exchange of information and assistance with the authorities and entities listed under Article 25 and between competent authorities and ESMA] your request dated *[dd.mm.yyyy]* with reference *[insert request reference number]* has been processed by us.

Information gathered

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[If the information has been gathered, please set out the information here or provide an explanation of how it will be provided including if relevant a description of any supporting documents or material]

The information provided is confidential and is disclosed to *[insert name of the requesting authority]* pursuant to the *[insert provision of the applicable sectoral legislation]* and on the basis that the information shall remain confidential in accordance with Article 13 of Commission Implementing Regulation (EU) No .../...¹¹ *[when the requesting authority is a competent authority, add “and Article 27 of Regulation (EU) No 596/2014”]*.

⁹ Insert reference to this Regulation
¹⁰ Insert reference to this Regulation
¹¹ Insert reference to this Regulation

The *[Insert name of the requesting authority]* shall observe the requirements of the Article 13 of Commission Implementing Regulation (EU) No .../...¹² with respect to the permissible uses of that information *[When the requesting authority is a competent authority or ESMA, add “, and of Article 28 of Regulation (EU) No 596/2014 with respect to personal data processing and transfer.”]*

If the *[Insert name of the requesting authority]* intends to use or disclose information provided in this reply for any purpose other than those stated in its request for assistance, it shall notify *[Insert name of the requested authority]* and obtain the prior consent of *[Insert name of the requested competent]*. If *[Insert name of the requested authority]* consents to such a use or disclosure of the information, it may subject it to certain conditions.

Yours sincerely,

[Name and signature]

¹⁷ Insert reference to this Regulation



ANNEX IV

Form for the provision of unsolicited exchanges of information

Unsolicited exchanges of information

Reference number:

Date:

Annexes: [*Specify the number of documents/supporting documents attached*]

General information

FROM:

Member State:

Transmitting Authority:

Legal address:

[*Insert the contact details of the contact point designated pursuant to Article 3 of the Commission Implementing Regulation (EU) No .../...¹³*]

Name:

Telephone:

Email:

TO:

Member State:

Recipient Authority:

¹³ Insert reference to this Regulation



Legal address:

[Insert the contact details of the contact point designated pursuant to Article 3 of the Commission Implementing Regulation (EU) No .../...¹⁴]

Name:

Telephone:

Email:

Dear *[Insert appropriate name]*

In accordance with Article [8, 9 or 10] of Commission Implementing Regulation (EU) No .../...¹⁵ laying down implementing technical standards [to determine procedures and forms for exchange of information with the authorities and entities listed under Article 25 and between competent authorities and ESMA], we are providing the following information we believe may be of assistance in carrying out your duties.

Information provided

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[Please set out the details of the information here, including if relevant a description of any supporting documents or material attached]

The information provided is confidential and is disclosed to *[insert name of the authority receiving the unsolicited information]* pursuant to Article 25 of Regulation (EU) No 596/2014 and on the basis that the information shall remain confidential in accordance with Article 13 of Commission

¹⁴ Insert reference to this Regulation
¹⁵ Insert reference to this Regulation

Implementing Regulation (EU) No .../...../...¹⁶ and Article 27 of Regulation (EU) No 596/2014 [When the recipient is ACER, add, “and to Article 17 of Regulation (EU) No 1227/2011].

The [Insert name of the authority receiving the unsolicited information] shall observe the requirements of the Article 13 of Commission Implementing Regulation (EU) No.../...¹⁷ with respect to the permissible uses of that information [when the authority receiving the unsolicited information is ESMA, add “ , and of Article 28 of Regulation (EU) No 596/2014 with respect to personal data processing and transfer; when the authority receiving the unsolicited information is ACER, add “and of Article 11 of Regulation (EU) No 1227/2011 with regard to personal data processing and transfer].

If the [Insert name of the competent authority receiving the unsolicited information] intends to use or disclose the information received for purposes different than those stated in Article 13(3) of Commission Implementing Regulation (EU) No .../...../...¹⁸, it shall notify [Insert name of the competent authority providing the unsolicited information] and shall obtain the prior consent of [Insert name of the competent authority providing the unsolicited information]. If [Insert name of the competent authority providing the unsolicited information] consents to such a use or disclosure of the information, it may subject it to certain conditions.

Yours sincerely,

[Name and signature]

¹⁶ Insert reference to this Regulation

¹⁷ Insert reference to this Regulation

¹⁸ Insert reference to this Regulation